

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

In-Flight Phone Corporation

File Nos.
26267-CG-TC-1-95
I-T-C-95-224(TC)

For Transfer of Control to MCI
Telecommunications Corporation

DECLARATORY RULING AND ORDER¹

Adopted: June 9, 1995;

Released: June 9, 1995

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, and the Chief, Telecommunications Division, International Bureau:

1. In February 1995, In-Flight Phone Corporation ("In-Flight") filed the above-captioned applications seeking Commission consent to the transfer of control to MCI Telecommunications Corporation ("MCI") of (1) In-Flight's 800 MHz air-to-ground ("ATG") license² and (2) its Section 214 certificate to provide international switched services on a resale basis.³ The applications also seek a determination under Section 310(b)(4) of the Communications Act of 1934 (the "Act") that the presence of up to a 35 percent alien ownership interest in In-Flight's parent corporation would not be inconsistent with the public interest. Both of In-Flight's applications were placed on public notice. No comments were filed in response. Based upon our review of the applications, we conclude that grant of the subject applications will serve the public interest, convenience, and necessity.⁴ We further find that the proposed alien ownership of In-Flight is not inconsistent with the public interest under Section 310(b)(4).

2. In-Flight, a Delaware corporation, is licensee of the 800 MHz ATG system operating under call sign KNKG798. It also holds a certificate to provide international switched

services by resale of services offered by other carriers under tariff. In-Flight is controlled by the Goeken Group Corporation ("GGC"), a privately held Delaware Corporation, which held an 83 percent ownership interest in In-Flight at the time the application was filed. On May 4, 1995, In-Flight filed a minor amendment indicating that GGC had acquired ownership of 97.771 percent of In-Flight's capital stock.⁵ GGC is currently 24.016 percent foreign-owned (slightly less than the 25 percent benchmark under Section 310(b)(4)).

3. MCI is a 12.3 percent owner of the capital stock of GGC. MCI also is direct owner of 1.681 percent of In-Flight's capital stock. MCI, in turn, is a wholly-owned subsidiary of MCI Communications Corporation, which is 20 percent owned by British Telecommunications, plc ("BT"), a foreign carrier. In July 1994, the Commission approved MCI's request for aggregate alien ownership up to 28 percent (including BT's 20 percent interest), exceeding the 25 percent benchmark under Section 310(b)(4).⁶

4. Under the terms of the proposed transfer, MCI will acquire up to a 72.969 percent controlling interest in GGC. Thus, the 28 percent alien ownership interest in MCI will be fully attributable to In-Flight through GGC. In addition, several other alien owned entities will have direct or indirect minority interests in GGC, resulting in an aggregate ownership interest in GGC of 32.447 percent.⁷ In-Flight accordingly requests that the Commission approve alien ownership in GGC up to a maximum of 35 percent.

5. In this decision, we examine two issues: (1) whether transfer of control of In-Flight to MCI serves the public interest, and (2) whether it is consistent with the public interest to allow alien ownership of GGC to exceed the 25 percent benchmark in Section 310(b)(4). Pursuant to Section 11 of the Clayton Act, the Commission must also evaluate the effect on competition of transactions involving telecommunications entities.⁸

6. To determine whether the proposed transfer of control is in the public interest, we examine several factors. In previous cases, the Commission has held that a transfer of control that increases the financial ability of a licensee with respect to its operations serves the public interest.⁹ The

¹ This order supersedes the June 2, 1995, Declaratory Ruling and Order by the Wireless Telecommunications Bureau, Commercial Wireless Division, granting In-Flight's application for consent to transfer of control of its 800 MHz air-to-ground facilities to MCI. See *Declaratory Ruling and Order*, DA 95-1216, released June 2, 1995. The June 2 order incorrectly stated that In-Flight's Section 214 request for transfer of control of its international resale facilities (File No. I-T-C-95-224(TC)) had previously been approved by the Chief, International Bureau under streamlined processing procedures. The listing of In-Flight's Section 214 application as subject to streamlined processing was in error, and was corrected by Public Notice on March 24, 1995. See FCC Report No. I-8031, March 24, 1995. For reasons of administrative convenience, we are therefore vacating the prior order and addressing both applications by this joint order.

² File No. 26267-GC-TC-1-95, filed February 14, 1995.

³ File No. I-T-C-95-224(TC), filed February 24, 1995.

⁴ In-Flight also requests approval of the transfer of experimental license KF2XIZ as part of the same transaction. This request is granted by operation of this Order.

⁵ See Minor Amendments, In-Flight Phone Corporation Transfer of Control to MCI Telecommunications Corporation, File No. 26267-CG-TC-95, at 2-6 (May 5, 1995).

⁶ MCI Communications Corporation, *Declaratory Ruling and Order*, 9 FCC Rcd 3960, 3973 (1994) (*BT/MCI Order*).

⁷ As a result of the proposed transaction, the Dearborn Group and the MeesPierson Group, both foreign-owned entities, will hold approximately 2.7 percent and 1.1 percent shares of GGC. A third minority shareholder in GGC, the John Hancock Corporation, is also 3 percent foreign owned.

⁸ See Applications of Contel Corporation, Transferor, and GTE Corporation, Transferee, *Memorandum Opinion and Order*, 6 FCC Rcd 1003 (1991).

⁹ See Application for Approval of the Transfer of Control of American Satellite Company, *Memorandum Opinion and Order*, File No. ENF-85-50 (Com. Car. Bur. Oct. 16, 1985).

Commission has also held that the public interest is served if a proposed transaction would increase competition among market participants.¹⁰

7. Based on these criteria, we find that the requested transfer of control will serve the public interest. First, MCI's acquisition of a controlling interest in In-Flight will bolster In-Flight's financial strength. In-Flight has entered into contracts with several major domestic airlines to install ATG telephone equipment and provide service. As a result of the transfer, In-Flight will be able to draw on MCI's financial resources to meet its contractual obligations and bring service to the public more quickly. Second, we believe the transfer will foster greater competition in the provision of domestic and international ATG service. At present, In-Flight is one of three ATG providers, along with GTE/Airfone and AT&T/Claircom. Neither of these companies currently has any connection to MCI. Thus, no competitor would be eliminated. The proposed transfer of control will not only maintain this competitive structure, but will enhance In-Flight's ability to compete with well-financed rival companies. For these reasons, we also find that the proposed transfer will have a pro-competitive effect on the ATG product market.

8. With respect to the alien ownership issue, the presence of aggregate alien ownership in GGC, the parent corporation of a Title III common carrier radio licensee, triggers the application of Section 310(b)(4)'s statutory benchmark. Section 310(b)(4) vests the Commission with the discretion to disallow alien ownership that exceeds the 25 percent statutory benchmark if we determine the "public interest will be served by the . . . revocation of such license."¹¹ The Commission previously has authorized alien ownership beyond the statutory benchmark.¹²

9. In-Flight's applications do not raise the traditional issues present in a Section 310(b)(4) analysis. Of the proposed 35 percent alien ownership in GGC, the 28 percent ownership interest attributed by MCI has previously been found by the Commission to be in the public interest.¹³ We conclude that the Commission's findings in that order regarding MCI's ownership apply equally to GGC, which will be controlled by MCI as a result of this transaction.¹⁴ In addition, the current non-MCI foreign ownership interest in GGC is only 4.447 percent of GGC's equity. This ownership is dispersed among several investors who, even if they acted together, could have no effective control over GGC's operations. We thus conclude that allowing up to 35 percent foreign ownership in GGC is not inconsistent with the public interest.¹⁵

10. Accordingly, IT IS ORDERED, pursuant to Sections 5(c), 310(b)(4), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c), 310(b)(4) and 310(d), that In-Flight Phone Corporation's Applications File Nos. 26267-TC-1-95 and I-T-C-95-224(TC) for Transfer of Control ARE HEREBY GRANTED. Furthermore, alien

ownership up to a level of 35 percent in the Goeken Group Corporation, the parent corporation of In-Flight, is not inconsistent with the public interest under Section 310(b)(4).

11. IT IS FURTHER ORDERED that the *Declaratory Ruling and Order*, DA 95-1216, released June 2, 1995, is VACATED.

12. This Order is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Declaratory Ruling and Order.

FEDERAL COMMUNICATIONS COMMISSION

Rosalind K. Allen
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

¹⁰ See *Execuline of Sacramento, Inc. Transferor, and American Sharecom, Inc. Transferee, Memorandum Opinion and Order*, 6 FCC Rcd 5964 (1991).

¹¹ 47 U.S.C. § 310(b)(4).

¹² See, e.g., *Teleport Transmission Holdings, Inc.*, 9 FCC Rcd 6430, 6431 (1994); *GRC Cablevision, Inc.*, 47 FCC 2d 467 (1974).

¹³ See *BT/MCI Order*, 9 FCC Rcd at 3973.

¹⁴ This order is conditioned on MCI's continued compliance with the conditions set forth in the *MCI/BT Order*. See *MCI/BT Order*, 9 FCC Rcd at 3973, ¶¶ 59-73.

¹⁵ We note that on February 17, 1995, the Commission proposed new rules and policies which, if ultimately adopted, would affect our public interest analysis under Section 310(b)(4). The proposed rules and policies are designed to address concerns regarding asymmetric entry in the U.S. facilities-based telecommunications service market by foreign carriers and to encourage a competitive global market. See *Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rule Making*, IB Docket No. 95-22, 10 FCC Rcd 4844 (1995), at ¶¶ 35-49.